No. 86-823

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MOBIL OIL CORPORATION,

Petitioner,

v.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF AMICUS CURIAE COASTAL PETROLEUM COMPANY

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INTEREST OF THE AMICUS CURIAE

Coastal Petroleum Company (Coastal) appears as Amicus Curiae pursuant to Rule 36 by consent of the parties. Coastal is lessee of the upstream portion of the Peace River in central Florida, the ownership of which is the issue in this case, pursuant to Lease 224-B granted by the Board of Trustees of the Internal Improvement Trust Fund (Trustees). Coastal's Lease has been determined to include minerals. *Collins v. Coastal Petroleum Co.*, 118 So.2d 796 (Fla. 1st DCA 1960). Coastal and the Trustees, in related litigation, are seeking damages for wilful conversion of minerals from these beds of the Peace River by Mobil.

Coastal was a party defendant in the trial court, but did not appeal the adverse decision. Since Coastal's conversion claim for past mining in related cases was not affected by a determination of title on the date of the quiet title judgment, Coastal chose not to appeal the summary judgment. When the intermediate appellate court wrote an opinion in this case, after unappealable per curiam affirmances in four similar cases, review of the decision became important. Coastal participated as Amicus Curiae before the Florida Supreme Court. In consolidated proceedings before the Florida Supreme Court, Coastal was a party. *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986).

Coastal's lease interest is therefore affected by the issues before this Court.

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STATEMENT OF THE CASE

A. The Peace River. The river involved here is the Peace River. The Peace River rises north of Bartow, Florida, and flows southwestward to Charlotte Harbor, a distance of approximately 100 miles. Portions of the main channel of the river bed are claimed by Mobil. The public use and characteristics of this navigable river, however, have been addressed by Lynn Ware's affidavit in opposition to summary judgment (R 421). This is one of Florida's major river systems and enjoys a long involvement in Florida history. Although the Peace River is not meandered in the area, the federal surveyor was given special instructions

which did not require meandering. A-3. These special instructions included the entire area downstream to immediately where meandering began by another surveyor (R 388, 412).

B. Mobil's Recognition of State Ownership. Internal documents[1] found in discovery show Mobil's own recognition of the navigability of the Peace River. A-4, 5, 6. In purchasing lands along the Peace River, Mobil would not pay Mr. Mann for the bed of the Peace River because it recognized that the bed of the Peace River was ". . . not owned by Mr. Mann, but by the State of Florida. . . ." A-6. Yet Mobil now claims to own this very part of the bed of the Peace River.

C. Mobil's Mining of the bed of the Peace River. In discovery, Coastal found a letter from Mobil to International Minerals & Chemical Corporation in which Mr. Hughes tells Mr. Feigin of a visit by a Coastal consultant, Mr. Mayberry. In that letter, Mobil again acknowledges State ownership of the river bed and recognizes the damages if mining of the river bed was determined. Mobil's Hughes sought IMC's Feigin's cooperation in deceiving Coastal. A-4, 5.

D. Suit Against Mobil for Conversion. In August, 1961, Mobil was aware of the State's ownership of the river bed; that the high water mark defined the limits of the river bed; and that if the level of the river were determined. Mobil would be responsible for damages. A-4, 5. What is clear is that Mobil did not tell Coastal's consultant the truth and asked IMC to take the same position.

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[1] Of course, some might disagree with the interpretations or inferences of this correspondence, but it must be remembered that the final judgment was a summary judgment and all reasonable inferences must be made against Mobil here. The trial court ignored these facts and based its judgment on conclusions of law.

Mobil, when called upon to defend the claims for mining in the bed of the Peace River, presented quite a different response than the foregoing facts would lead one to expect. In *Mobil Oil Corporation v. Coastal Petroleum Company*, Case No. 76-2078 (Mobil I), now pending in Leon County, Florida Circuit Court, Mobil for the first time[2] claimed the river was *conveyed* by federal patents[3] and swamp and overflowed lands' deeds. A-2. Mobil claimed title by federal grants or "patents" to private persons after statehood, and by state deeds (swamp and overflowed lands deeds) which would have had to have been issued by the state based upon its receipt of fee simple title from conveyances by federal patents issued pursuant to the *Swamp & Overflowed Lands Act, September 28, 1850, 43 U.S.C. 982.* In each case, Mobil claimed title by chaining title back to federal patents, directly or indirectly. These conveyances relied upon by Mobil were by section or subsection and not by metes and bounds descriptions. The conveyances did not indicate transfer of or even a reference to the bed of the Peace River, but merely were the conveyance by gross description.

E. The Florida Supreme Court Decision. Mobil then brought a series of cases in the lower court, including this case. On appeal of this case, three certified questions[4] were presented to the Florida Supreme Court. When the answers were given, no earthquake was felt, no surprise was expressed, no lands were grabbed. The well-established law of Florida had been reaffirmed as alive and well. Mobil had

[2] Such pretense is consistent with the beginning of the phosphate industry. See A-7.

[3] The present case includes only swamp and overflow deeds, but it can hardly be claimed that federal patents are not involved in the controversy as Mobil itself has pleaded in Mobil I. A-2. No such federal patents under the certain and unambiguous decisions of this Court, can include the bed of this navigable river. See Argument p. 4-8, herein.

[4] The certified questions stated by Mobil are considerably misstated from those actually certified. Compare p. 1 of the Petition with 2a of Mobil's Appendix.

sought to change that body of law so that, despite its inequitable position, it could hide behind paper.

Mobil has now petitioned this Court seeking review in a last attempt to change the well-established property law of Florida.

SUMMARY OF ARGUMENT

Coastal respectfully submits that certiorari should not be granted for two reasons:[5]

I. Mobil seeks to overturn what the Florida Supreme Court in this case termed "well-established" property law of the State of Florida (*Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986), Mobil's Appendix, p. 9A) and of the United States and thereby create a private title to a bed of a navigable stream in Florida.

A. Federal patents may not convey the beds of navigable streams in Florida, *Shively v. Bowlby*, 152 U.S. 1 (1893). Federal patents are open to the question of jurisdiction over the lands. *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10 (1935), and *Summa Corp. v. California ex rel. Lands Commission*, 466 U.S. 198 (1984). The federal patents Mobil claims under do not provide any unimpeachable title; nor do the enabling federal patents to the States, which were the prerequisite for the States' swamp and overflow deeds.

B. Florida swamp and overflow deeds have always been held not to include the beds of navigable rivers and lakes.

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[5] Untimely raising of the "federal" issues is an additional reason for not reviewing the decision of the Florida Supreme Court here. *McCullough v. Kammerer Corp.*, 323 U.S. 327 (1945).

II. There is no substantive due process question. Mobil knew when it purchased adjacent lands that the State of Florida owned the bed of the Peace River. Mobil's mining of the bed of the Peace River was an intentional conversion of minerals not protected by any provision of the Constitution.

ARGUMENT

I. What is before the Court in essence is the petition of Mobil to overturn well-established, well-reasoned Florida and Federal property law to create a private title to the bed of a navigable river in Florida.

Mobil begins by contending that it has unimpeachable title to the bed of a navigable stream by virtue of Federal and Florida law. An analysis of the law reveals the absence of any title to a navigable river bed, let alone any "unimpeachable title." In fact, Mobil attempts to change the law by this proceeding to create title in the first instance.

A. In *Summa Corp. v. California ex rel. Lands Commission*, 466 U.S. 198, 205 (1984), the Court stated the rule[6] governing federal patents:

> "The Federal Government, of course, cannot dispose of a right possessed by the State under the equal-footing doctrine of the United States Constitution. Pollard's Lessee v. Hagan, 3 How 212, 11 L.Ed. 565 (1845). Thus, an ordinary federal patent purporting to convey tidelands located within a State to a private individual is invalid, since the United States holds such tidelands only in trust for the State. Borax, Ltd. v. Los Angeles, 296 U.S. 10, 15-16, 80 L.Ed. 9, 56 S.Ct. 23 (1935)."

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[6] The Court, in *Borax*, distinguished the unusual case involved in *Summa:* where the Federal government in discharging ". . . its international duty with respect to land which, although tideland, had not passed to the state." *Summa, supra*, at 243. Mobil ignores this significant limitation in *Summa*.

In *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10 (1935), the Court contrasted two situations: one involving an attack on the exercise of judgment in granting federal patents; and one involving a question as to the authority or jurisdiction over the lands in the first instance:

> "2. As to the land in suit, petitioners contend that the General Land Office had authority to determine the location of the boundary between upland and tideland and did determine it through the survey in 1880 and the consequent patent to Banning, and that this determination is conclusive against collateral attack; in short, that the land in controversy has been determined by competent authority not to be tideland and that the question is not open to reexamination. Petitioners thus invoke the rule that 'the power to make and correct surveys belongs to the political department of the government and that, whilst the lands are subject to the supervision of the General Land Office, the decisions of that bureau in all such cases, like that of other special tribunals upon matters within their exclusive jurisdiction, are unassailable by the courts, except by a direct proceeding.' R.S., 453, 2395-2398, 2478; 43 U.S.C. 2, 751-753, 1201. Cragin v. Powell, 128 U.S. 691, 698, 699; Heath v. Wallace, 138 U.S. 573, 585; Knight v. United States Land Assn., supra; Stoneroad v. Stoneroad, 158 U.S. 240, 250, 252; Russell v. Maxwell Land Grant Co., 158 U.S. 253, 256; United States v. Coronado Beach Co., 255 U.S. 472, 487, 488.
>
> But this rule proceeds upon the assumption that the matter determined is within the jurisdiction of the Land Department. Cragin v. Powell, supra.

* * * * *

> This contention encounters the principle that the question of jurisdiction, that is, of the competency of the Department to act upon the subject matter, is always one for judicial determination. 'Of course,' said the Court in Smelting Co. v. Kemp, 104 U.S. 636, 641, 'when we speak of the conclusive presumptions attending a patent for lands, we assume that it was issued in a case where the department had jurisdiction to act and execute it; that is to say, in a case where the lands belonged to the United States, and provision had been made by law for their sale. If they never were public property, or had previously been disposed of, or if Congress had made no provision for their sale, or had reserved them, the department would have no jurisdiction to transfer them, and its attempted conveyance of them would be inoperative and void, no matter with what seeming regularity the forms of law may have been observed.' The Court added that questions of that sort 'may be considered by a court of law'; for in such cases 'the objection to the patent reaches beyond the action of the special tribunal, and goes to the existence of a subject upon which it was competent to act.' Id. See, also, Polk v. Wendall, 9 Cranch 87, 99; Moore v. Robbins, 96 U.S. 530, 533; Wright v. Roseberry, 121 U.S. 488, 519; Doolan v. Carr, 125 U.S. 618, 625; Hardin v. Jordan, 140 U.S. 371, 401; Crowell v. Benson, 285 U.S. 22, 58, 59." *Borax, supra,* p. 16-18.

Thus, while a federal patent is conclusive as to matters of judgment, it is not conclusive as to the authority or jurisdiction to act in the first instance:

> "Was it upland, which the United States could patent, or tideland, which it could not? Such a

> controversy as to title is appropriately one for judicial decision upon evidence, and we find no ground for the conclusion that it has been committed to the determination of administrative officers." *Borax, supra,* p. 18, 19.

In cases[7] like *Shively v. Bowlby,* 152 U.S. 1, 58 (1893), this Court has inquired into jurisdiction of federal patents issued even before statehood of the territory involved:

> "The United States, while they hold the country as a territory, having all the powers both of national and of municipal government, may grant, for appropriate purposes, titles or rights in the soil below high water mark of tide waters. But they have never done so by general laws; and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and in the soil under them, to the control of the states, respectively, when organized and admitted into the Union.
>
> Grants by Congress of portions of the public lands within a territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no title or right below high water mark, and do not impair the title and dominion of the future state when created; but

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[7] The federal cases cited by Mobil involve questions of judgment and not questions of authority or jurisdiction. *French v. Fyan,* 93 U.S. 169, 171 (1876), limited the Secretary's unimpeachable acts to "... matters ... within the scope of his authority ....." *McCormick v. Hayes,* 159 U.S. 332 (1895), cited this same limitation in *French,* 341, and relied upon *French,* 348.

> leave the question of the use of the shores by the owners of uplands to the sovereign control of each state, subject only to the rights vested by the Constitution in the United States."

Thus, the unimpeachable law of these United States, as consistently held by this Court, is that federal patents, with the exception of international considerations, must rest on lawful jurisdiction or the federal patents will be open to a question of jurisdiction.

Here the swamp and overflow conveyances[8] were subsequent to enabling federal patents. Mobil specifically cites the portion of the *Swamp and Overflowed Lands Act* which also demonstrates the reliance on federal patents in its chain of title. Petition, p. 3. Under *Shively, Borax and Summa,* federal patents could not convey sovereignty lands. Now, if the predicate federal patents could not convey such beds of navigable streams, how is it that subsequent Florida swamp and overflow deeds, predicated on these federal patents, are supposed to do so?[9] Clearly, under Federal law, the predicate federal patents are subject to inquiry as to jurisdiction and are not conclusive on their face, *Borax, supra.* No sovereignty stream beds could have been conveyed by such federal patents, *Shively, supra.*

Florida, too, has adopted this same legal distinction in considering questions raised about swamp and overflow deeds following the enabling federal patents. For example, with respect to lands received for military reservations, see

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[8] The claims in issue in the Mobil cases include federal patents. A-2. As to these federal patents, *Shively* unquestionably ends any claim to the bed of navigable streams in Florida.

[9] A different rule governing the conclusion as to federal patents and as to State deeds would result in intermittent pieces of publicly and privately owned navigable river bed.

Florida Town Imp. Co. v. Bigalsky, 44 Fla. 771, 33 So. 450 (1902), and Section 16 lands dedicated to schools, see *State ex rel. Kittle v. Jennings*, 47 Fla. 302, 307, 35 So. 986, 995 (1903), where it was held:

> "In support of our views, we further cite Leavenworth, Lawrence & Galveston R. Co. v. United States, 92 U.S. 733, text, 741, 742, 23 L.Ed. 634, St. Paul & S.C.R. Co. v. Winona & St. P.R. Co., 112 U.S. 720, 5 Sup. Ct. 334, 28 L.Ed. 872, and Wilcox v. McConnell, 13 Pet. 498, 10 L.Ed. 264, to the effect that, when land has been previously appropriated to another purpose, a subsequent grant by Congress cannot be supposed to include such land, unless there be an express declaration to that effect."

The beds of navigable streams involved passed to Florida on March 3, 1845 at statehood by virtue of equal footing. When Congress passed the *Swamp & Overflowed Lands Act, September 28, 1850, 43 U.S.C. 982*, these river beds had been earlier transferred by operation of law. Like its Federal counterpart, under Florida law, the subject of jurisdiction is open to inquiry.

Mobil seeks to overturn this Florida and Federal property law so that it may create a claim to the bed of a navigable stream.

B. Florida swamp and overflowed 'ands' deeds have always been held not to include the beds of navigable rivers and lakes. Mobil seeks again to change the law of Florida by first suggesting the Florida Supreme Court was acting by pretense.[10] In its decision, the Florida Supreme Court held:

> ". . . the following questions were certified as being of great public importance:

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[10] See Petition, p.23.

I. Do the 1883 swamp and overflowed lands deeds issued by the Trustees include sovereignty lands below the original high-water mark of navigable rivers?

* * * * *

We answered the first certified question in the negative when we held in *Martin*, 93 Fla. at 573, 112 So. at 286-87 that:

> The State Trustee defendants cannot by allegation, averment or admission in pleadings or otherwise affect the legal status of or the State's title to sovereignty, swamp and overflowed or other lands held by the Trustees under different statutes for distinct and definite State purposes . . . . The subsequent vesting of title to sovereignty lands in the Trustees for State purposes under the Acts of 1919 or other statutes does not make the title to sovereignty land inure to claimants under a previous conveyance of swamp and overflowed lands by the State Trustees who then had no authority to convey such sovereignty lands and did not attempt or intend to convey sovereignty lands.

Further,

> [i]f by mistake or otherwise sales or conveyances are made by the Trustees of the Internal Improvement Fund of sovereignty lands, such as lands under navigable waters in the State or tide lands, or if such Trustees make sales and conveyances of State School lands, as and for swamp and overflowed lands,

> under the authority given such Trustees to convey swamp and overflowed lands, such sales and conveyances are ineffectual for lack of authority from the state.
>
> Id. at 569, 112 So. at 285 (citations omitted).
>
> * * * * *
>
> The first is whether the legislature intended to overturn the well-established law that prior conveyances to private interests did not convey sovereignty lands encompassed within swamp and overflowed lands being conveyed. We must assume that the legislature knew this well-established law when it enacted MRTA." Petition Appendix, 2a, 5a, 6a.

There has never been a case to the contrary involving navigable lakes and rivers where authority to convey was absent.[11] Mobil has not cited one to this Court! Mobil has attempted to distinguish the cases determining this issue against it over the history of Florida, but it fails to cite a single case to demonstrate any surprise or sudden change in the law.

The Florida Supreme Court was perfectly consistent in its approach. The answer it gave to the first certified question presented to it is the "well-established" law of Florida. Swamp and overflowed lands' deeds do not convey the beds of sovereign lakes and rivers any more than federal patents do. Mobil's attempt to change the property law of Florida to create a title to the beds of navigable streams is

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[11] *Pembroke v. Peninsular Terminal Co.*, 108 Fla. 46, 146 So. 249 (1933), involving tidal areas, *Trustees of the Internal Improvement Fund v. Lobean*, 127 So.2d 98 (Fla. 1961), involving tidal areas subject to sale, and *Trustees of the Internal Improvement Fund v. Wetstone*, 222 So.2d 10, 12 (Fla. 1969), involving only a boundary question and recognizing the well-established law. *Odom v. Deltona Corp.*, 341 So.2d 977, 988 (Fla. 1976), even cited *Martin v. Busch*, 93 Fla. 535, 112 So. 274 (1927), with favor and recognized the well-established law could not be "doubted," at 981.

not a proper subject for certiorari. Mobil has no unimpeachable title by Federal or Florida law. The Petition should not be considered.

II. Not only is the Florida law that swamp and overflowed lands' deeds do not convey navigable water bottoms so well established that one should not be surprised or term the decision a legal "earthquake," but Mobil knew it did not own the bed of the Peace River. The feigned surprise is at odds with Mobil's own correspondence.

In considering the purchase of tracts of land, Mobil not only recognized that the State of Florida owned the bed of the Peace River, but also refused to pay for any part of such tracts as appeared to be in the Peace River. A-6. In fact, when Coastal inquired as to whether Mobil would mine Coastal's leased areas, Mobil represented there were no commercial deposits of minerals there and discouraged Coastal. This deceit was disclosed in discovery in an intercompany letter from Mobil to another phosphate company in which Mobil acknowledged State ownership of the bed of the Peace River and the damages that Mobil would suffer if the conversion were determined. A-4, 5. Mobil only feigns surprise and legal earthquakes.[12]

Under federal notions of substantive due process, there is a taking only where the reasonable expectations of a party are upset by an unforeseen or sudden change in state law. *Hughes v. Washington*, 389 U.S. 290, 296 (1967). Mobil does not seek to protect against a taking; it seeks to establish a new title by changing the "well-established" law of Florida. The case should not be reviewed.

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[12] Under Florida law, the doctrines of "equitable estoppel," *Trustees of the Internal Improvement Fund v. Claughton*, 86 So.2d 775 (Fla. 1956), and "betterment," *Section 66.041, Florida Statutes (1985)*, protect citizens from inequity. Mobil seeks to change the law because it can show neither equity nor any improvement of the areas in issue. Mobil simply took minerals it knew it did not own.

CONCLUSION

Mobil Oil Corporation has failed to establish any unimpeachable title resting upon Federal or Florida law. Mobil seeks to create title by urging a reversal of long-standing property law governing federal patents, state deeds, and sovereignty lands.

Mobil was not surprised by the decision of the Florida Supreme Court because it has always believed the State of Florida owned the bed of the Peace River. Yet Mobil mined and deceived to hide its conversion of minerals from the bed of the Peace River.

No protected federal interest is involved, either under the Laws or Constitution of the United States. The cause should not be reviewed.

Respectfully submitted,

ROBERT J. ANGERER
Counsel of Record
IRVING R.M. PANZER
C. DEAN REASONER

Attorneys for Amicus Curiae
Coastal Petroleum Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that all parties required to be served have been served, as follows: three copies of the Brief of Amicus Curiae Coastal Petroleum Company were served by United States Mail to JULIAN CLARKSON, Holland & Knight, P.O. Drawer 810, Tallahassee, FL 32302, Counsel for Mobil Oil Corporation, and to PARKER D. THOMPSON, 200 South Biscayne Blvd., Suite 4900, Miami, FL 33131-2363, Counsel for the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, and additional copies were mailed to the following additional Counsel: LOUIS F. CLAIBORNE, Wrawby House, Park Road, Wivenhoe, Essex, England, CHARLES H. KIRBO, King & Spalding, 2500 Trust Company Tower, Atlanta, GA 30303, LOUIS F. HUBENER, Dept. of Legal Affairs, Suite 1501, The Capitol, Tallahassee, FL 32301, LEE R. ROHE, Esquire, Dept. of Natural Resources, 3900 Commonwealth Blvd., Tallahassee, FL 32303, and BARRY S. RICHARD, Post Office Drawer 1838, Tallahassee, FL 32302, this 6th day of January, 1987.

_____

Irving R.M. Panzer

APPENDIX

APPENDIX

INDEX

ATTACHMENT C (R 121)
(To Coastal Petroleum Company's Motion to Dismiss, R 105)

(MOBIL I)
ANSWER AND DEFENSES TO COUNTERCLAIM TO SECOND AMENDED COMPLAINT (R 122)

Plaintiff, MOBIL OIL CORPORATION ("Mobil"), files its answer and defenses to the counterclaims of COASTAL PETROLEUM COMPANY ("Coastal"), as follows:

* * * * *

AFFIRMATIVE DEFENSES TO SECOND COUNTERCLAIM

1. All lands on which Mobil is mining or has mined were patented or deeded out of the United States of America or the State of Florida and into private ownership; none of the lands on which Mobil has mined are sovereignty lands, nor were they sovereignty lands on the date Lease 224-B was executed; all lands on which Mobil has mined were deeded to its predecessors in title or estate by the State of Florida or the United States of America.

AFFIDAVIT OF JOHN W. DUBOSE (R 380, 386, 387)

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority, personally appeared JOHN W. DUBOSE, who was duly sworn and states the following facts to be true:

* * * * *

26. One must carefully review all pertinent information such as the General Land Office Plats, field notes, contracts, general instructions and special instructions to each Deputy Surveyor to fully understand what was required of each Surveyor to fully discharge his responsibilities. To assume that each survey was done in accordance with one printed circular is misleading as the criteria changed with each contract and change in the needs of the area surveyed. The special instructions superseded the printed general instructions; for instance, the special instructions stated, 'Should any of your lines intersect a navigable stream or body of water of such depth and dimensions as to require meandering you will note the distance thereto and at said point of intersection establish a corner . . . .' As can be seen by these special instructions, the decision to meander or not meander was left up to the surveyor.

AFFIDAVIT OF PHILLIP W. WARE (R 430, 431)

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority, personally appeared PHILLIP W. WARE, who was duly sworn and states:

* * * * *

5. Attached as Exhibit D is a true and accurate copy of a letter produced to attorneys for Coastal Petroleum Company by Mobil Oil Corporation dated August 4, 1961, from C.V.O. Hughes to Harry Feagin [sic].

* * * * *

11. Attached as Exhibit J is a true and accurate copy of a letter produced to attorneys for Coastal Petroleum Company by Mobil Oil Corporation dated October 18, 1960, from C.V.O. Hughes to A.A. Farrell.

* * * * *

EXHIBIT D

August 4, 1961

Mr. Harry Feigin
International Minerals & Chemical Corporation
P.O. Box 867
Bartow, Florida

Dear Harry:

I had a visit from Dick Mayberry, in connection with the mineral values in the Peace River Valley. He said he was representing Coastal Petroleum Company, which had purchased a great amount of mineral rights from the State of Florida in various lakes and river flood plains. Dick was interested in discovering what kind of mineral content there was in the bed of Peace River, and in adjacent flood plains.

This reminded me that Lamar Johnson had once told me that Coastal Petroleum Company had some sort of vague generalized lease from the State of Florida on hundreds of thousands of acres of mineral rights. They had exercised these rights on some property that Lamar Johnson himself had under lease, near Lake Okeechobee. He told me that Coastal Petroleum had won an initial court judgment sustaining their right to go on to the surface premises of these lands to exercise their rights under the agreement they held from the State of Florida.

It occurred to me that possibly this is a roundabout way for someone to get an independent opinion of the value of mineral deposits in the Peace River Valley. Possibly someone who was already familiar with Coastal Petroleum has alerted them to this study, wanting to get some valuation of the worth of the mineral rights for other purposes.

I told Dick Mayberry that the phosphate mineral right in the bed of Peace River, or immediately adjacent, was in thin beds, low grade, and not at present commercially mineable. However, I want to make it clear that this statement does not cover that area of land that is beyond the immediate river bed, and does not in anyway change our own evaluation of the damages we might suffer should the river level be permanently held at an elevated value. In other words, there is no conflict between the very general statement that Coastal Petroleum might come up with, and our own evaluation of losses should the river levels be changed by dams built by the Peace River Valley water conservation and drainage district.

You may also be contacted by Dick Mayberry, or by Coastal Petroleum. We do not in any case recognize that Coastal Petroleum has mineral rights near Peace River that supersede ours. I made this clear to Dick Mayberry. The legal bed of the river, or the legal flood plain, has never been determined. Measurements along the river of high stage and low stage water are not detailed enough to describe accurately and legally a flood plain that might belong to the State of Florida, along with the bed of the river. I am assuming that your own position will be essentially the same.

Very truly yours,

s C.V.O. Hughes
Manager

CVOH dj

cc: Mr. Raymond W. Stuck
1230 Hopedale Drive
Ft. Myers, Florida

bcc: Mr. A.A. Farrell
Mr. D.H. Barnett
Mr. W.J. Menear

Nichols, Florida
October 18, 1960

GEORGE W. MANN 235 ACRES
Clear Springs Area

Mr. A.A. Farrell, Vice President
Mining Division - Richmond

Dear Andy:

When he was in to see Mr. Pascoe recently, G.W. (Floppy) Mann made the statement to Mr. Pascoe that he did not think he could purchase comparable land in Polk County for less than $1,000. per acre.

This statement is slightly fantastic on the face of it. Mr. Mann's land is largely river swamp, and this kind of land is available at much lower prices than $1,000. per acre. From my own experience in looking at cleared farm land in Polk and Hillsborough counties for personal reasons, I would say that land like this can be bought for $200. per acre or less. I checked with Mr. Menear, and he thinks that some can be bought down around $100. per acre near the south end of Polk County.

In order to make sure that we all know what we are talking about from a land standpoint, I asked Mr. Menear to make a rough survey of the land. Of the 235 acres, three acres is river which is not owned by Mr. Mann, but by the State of Florida; 34 acres are cypress swamp bordering the river; 53 acres are hardwood swamp bordering the cypress swamps; 30 acres are a muck pond located near the center west part of Mr. Mann's property; 105 acres is flat palmetto land, which might be considered unimproved and low yield pasture land; and 10 acres is hammock land that could be classified as marginal citrus land. I think that this will give a general idea as to what kind of property it is we are talking about.

Very truly yours,

CVOH/dj

/s/ C.V.O. Hughes
Manager

cc: Mr. H.L. Pascoe
Mr. W.J. Menear

AFFIDAVIT OF LYNN W. WARE (R 421, 426)

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v. The discovery of phosphate on Peace River brought new activity. Phosphate hunts were made by prospective investors by floating down the river in boats and taking samples. Exhibits 30, 31 and 32 are three accounts of the investors' phosphate hunts.

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EXHIBIT 32

THE FLORIDA PHOSPHATE INDUSTRY:
A History of the Development and Use of
a Vital Mineral, ARCH FREDRIC BLAKEY, pg. 21

M.T. Singter, a well-known geologist from Alabama, and Mr. Pratt, a chemist of Atlanta, were engaged by the company to make a scientific examination of the area. McKee and M.G. Darbyshire of Ft. Meade accompanied the expedition. They bought supplies, chartered a boat, and started down Peace River on what they called a hunting trip. Pratt used the seclusion of his tent to make chemical tests of rock taken from the river beds. After phosphate which averaged 61 per cent BPL was found, the men agreed that "their discovery must be kept a graveyard secret" to prevent land costs from skyrocketing. They discussed the matter and devised a scheme by which they could buy all the lands wanted at their own price. The country for miles around was covered with saw palmetto bushes, and the conspirators decided to tell landowners that these palmetto roots were rich in tannic acid. An expose of their plan three years later revealed:

It was agreed to announce that they intended starting a plant to extract the tannic acid, provided the property owners would sell them the land cheap enough; that as soon as they had grubbed out all the roots they would have no further use for the lands, and would sell them back to the owners for a mere song. The plan worked beautifully and soon, at very reasonable prices, they had deeds for all the land they desired.

The company soon secured forty-three miles of the river front, including both banks, making a total distance down the river of twenty-one and one-half miles.